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US EPA RECORDS CENTER REGION 5



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Washington, D.C. 20530

February 8, 1985

Becky A. Comstock, Esq.  
Dorsey & Whitney  
2200 First Bank Place East  
Minneapolis, Minnesota 55402

Re: United States v. Reilly Tar & Chemical Corp.  
no. 4-80-469 (D. Minn.)

Dear Becky:

I received your letter of February 7, 1984, sending Reilly's most recent draft of a consent decree. I would like to note some of our major problems with the document:

Paragraph C-13: You did not include the language which I proposed concerning the information known to a party. That language indicating that information known does not include undetected pollutants, the undetected migration or presence of pollutants and new information concerning the scientific premises of the consent decree is vital to our willingness to enter into any release.

Paragraph C-14: The term "Chemical Substances" is defined too broadly rather than being limited to coal tar, creosote, pentachlorophenol, zinc chloride and sulphuric acid.

Paragraph F: There are several inadequacies in your redraft of this paragraph. First, the arbitrary and capricious standard is not specified for court review. Second, the United States will not agree to the costs and attorney's fees provision in paragraph F-7. Third, the inflexible 60 day review period in paragraph F-2 is unacceptable.

Paragraphs K&L: We still disagree about the amount of payments. We also believe that the consent decree should specify that the decision by the Regional Administrator and MPCA Director to grant Reilly an extension for good cause shown is discretionary and not reviewable. Your draft does not specify that in a dispute Reilly shall the burden of proof that an event which causes delay is beyond its control.

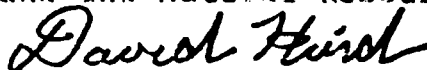
Paragraph P: We note that there needs to be separate provisions for payment of future costs.

Within the RAP which you sent, I noted that you deleted from section 1.2, the ability of the Regional Administrator and MPCA Director to designate new carcinogenic PAH as new information becomes available. This is an important issue. As I understood our dispute, you wished to tie the designation of a new carcinogen to an IARC determination, while we wished to empower the Regional Administrator and MPCA Director to make determinations on the basis on any scientific information available to them. You also wanted to make any designation of a carcinogen ineffective for three years, while we believed that steps should be taken immediately to protect the public in the event a new carcinogen is discovered. Your change in the RAP seems to be a step backward on Reilly's part.

This letter is not intended to be an exhaustive list of items in dispute concerning the consent decree or the RAP. Certainly, we have continuing disputes concerning release language, duration and past costs among other issues.

Sincerely yours,

Assistant Attorney General  
Land and Natural Resources Division



By: David Hird, Attorney  
Environmental Enforcement Section

cc: Robert E. Leininger  
Stephen Shaskan  
Elizabeth Thompson  
Christopher Grundler